

Calendar No. 1106

110TH CONGRESS
2D SESSION

S. 3662

To establish the Controlled Unclassified Information Office, to require policies and procedures for the designation, marking, safeguarding, and dissemination of controlled unclassified information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

To establish the Controlled Unclassified Information Office, to require policies and procedures for the designation, marking, safeguarding, and dissemination of controlled unclassified information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Implementing the Con-
5 trolled Unclassified Information Framework Act of 2008”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) CONTROLLED UNCLASSIFIED INFORMA-
4 TION.—The term “controlled unclassified informa-
5 tion” means information that—

6 (A) is not classified information, as that
7 term is defined in section 1 of the Classified In-
8 formation Procedures Act (18 U.S.C. App.);

9 (B) does not meet the standards for Na-
10 tional Security Classification under Executive
11 Order 12958;

12 (C) is pertinent to the national interests of
13 the United States or to the important interests
14 of entities outside the Federal Government; and

15 (D) under a Federal statute, executive
16 order, Presidential memorandum, or regulation
17 requires protection from unauthorized disclo-
18 sure, special handling safeguards, or prescribed
19 limits on exchange or dissemination.

20 (2) CONTROLLED UNCLASSIFIED INFORMATION
21 FRAMEWORK.—The term “controlled unclassified in-
22 formation framework” means a set of policies and
23 procedures governing the designation, marking, safe-
24 guarding, and dissemination of controlled unclassi-
25 fied information that originates in a Federal depart-
26 ment or agency, regardless of the medium used for

1 the display, storage, or transmittal of such informa-
2 tion.

3 (3) COUNCIL.—The term “Council” means the
4 Controlled Unclassified Information Council estab-
5 lished under section 3(c).

6 (4) FEDERAL DEPARTMENT OR AGENCY.—The
7 term “Federal department or agency”—

8 (A) means an Executive agency, as defined
9 in section 105 of title 5, United States Code, a
10 military department, as defined in section 102
11 of title 5, or the United States Postal Service;
12 and

13 (B) does not include the Government Ac-
14 countability Office.

15 (5) INFORMATION SHARING COUNCIL.—The
16 term “Information Sharing Council” has the mean-
17 ing given that term in section 1016 of the Intel-
18 ligence Reform and Terrorism Prevention Act of
19 2004 (6 U.S.C. 485).

20 (6) UNITED STATES PERSON.—The term
21 “United States person” has the meaning give that
22 term in section 101 of the Foreign Intelligence Sur-
23 veillance Act of 1978 (50 U.S.C. 1801).

1 **SEC. 3. CONTROLLED UNCLASSIFIED INFORMATION**
2 **FRAMEWORK.**

3 (a) CONTROLLED UNCLASSIFIED INFORMATION OF-
4 FICE.—There is established within the National Archives
5 and Records Administration a Controlled Unclassified In-
6 formation Office, which shall be headed by a Director, who
7 shall be appointed by, and report directly to, the Archivist
8 of the United States.

9 (b) AUTHORITIES AND RESPONSIBILITIES.—The Ar-
10 chivist of the United States, acting through the Director
11 of the Controlled Unclassified Information Office, shall—

12 (1) in consultation with the Council, develop
13 and publicly issue the controlled unclassified infor-
14 mation framework and controlled unclassified infor-
15 mation implementation guidance (including appro-
16 priate recommendations to State, local, and tribal
17 governments, law enforcement agencies, and private
18 sector entities for implementing the controlled un-
19 classified information framework) that are consistent
20 with this Act and the document issued by the Presi-
21 dent on May 7, 2008, entitled “Designation and
22 Sharing of Controlled Unclassified Information
23 (CUI)”, and any successor thereto;

24 (2) establish safeguarding and dissemination
25 controls, and, upon a determination that extraor-
26 dinary circumstances warrant the use of additional

1 controlled unclassified information markings, author-
2 ize the use of such additional markings;

3 (3) establish and serve as the chairperson of the
4 Council and work with the members of the Council
5 to develop a consensus regarding the contents of the
6 controlled unclassified information framework;

7 (4) for any aspect of the controlled unclassified
8 information framework relating to which the Council
9 is not able to reach a consensus, consult with the
10 chairperson of the Information Sharing Council;

11 (5) establish, approve, and maintain safe-
12 guarding standards and dissemination instructions
13 for controlled unclassified information, including
14 specified dissemination requirements proposed by the
15 head of a Federal department or agency;

16 (6) publish controlled unclassified information
17 safeguarding and dissemination standards and in-
18 structions;

19 (7) establish standards for the designating of
20 controlled unclassified information;

21 (8) monitor compliance by each Federal depart-
22 ment or agency with controlled unclassified informa-
23 tion policy, standards, and markings;

24 (9) establish baseline training requirements and
25 develop a Governmentwide controlled unclassified in-

1 formation training program to be implemented by
2 each Federal department or agency;

3 (10) provide appropriate information regarding
4 the controlled unclassified information framework to
5 Congress, State, local, and tribal governments, pri-
6 vate sector entities, and relevant experts;

7 (11) advise the head of each Federal depart-
8 ment or agency on the resolution by the Council of
9 complaints and disputes among Federal departments
10 or agencies concerning the proper designation or
11 marking of controlled unclassified information;

12 (12) ensure that all relevant documents regard-
13 ing the controlled unclassified information frame-
14 work, including implementation guidance issued by
15 the Archivist of the United States, implementation
16 guidance issued by the head of the Federal depart-
17 ment or agency, safeguarding and dissemination
18 standards and instructions, specified dissemination
19 requirements proposed by the head of a Federal de-
20 partment or agency under paragraph (5), and the
21 annual report required under subsection (j)(1), are
22 made available on the website of the National Ar-
23 chives and Records Administration in a timely man-
24 ner; and

1 (13) establish, in consultation with any affected
2 Federal department or agency, a process that ad-
3 dresses enforcement mechanisms and penalties for
4 improper handling of controlled unclassified informa-
5 tion.

6 (c) CONTROLLED UNCLASSIFIED INFORMATION
7 COUNCIL.—

8 (1) ESTABLISHMENT.—There is established as
9 a subcommittee of the Information Sharing Council
10 a Controlled Unclassified Information Council.

11 (2) MEMBERS.—The head of each Federal de-
12 partment or agency that has a representative on the
13 Information Sharing Council and any other Federal
14 department or agency determined appropriate by the
15 Archivist of the United States shall appoint a rep-
16 resentative to the Council, who may be the officer or
17 employee appointed by the head of the Federal de-
18 partment or agency as a member of the Information
19 Sharing Council.

20 (d) RESPONSIBILITIES OF THE COUNCIL.—The
21 Council shall—

22 (1) serve as the primary advisor to the Archi-
23 vist of the United States on issues relating to the
24 controlled unclassified information framework;

1 (2) advise the Archivist of the United States in
2 developing procedures, guidelines, and standards
3 necessary to establish, implement, and maintain the
4 controlled unclassified information framework;

5 (3) ensure coordination among each Federal de-
6 partment or agency participating in the controlled
7 unclassified information framework;

8 (4) advise the Archivist of the United States on
9 the resolution of complaints and disputes among
10 Federal departments or agencies about proper des-
11 ignation or marking of controlled unclassified infor-
12 mation; and

13 (5) as appropriate, consult with any other sub-
14 committee of the Information Sharing Council, Con-
15 gress, State, local, and tribal governments, private
16 sector entities, and relevant experts.

17 (e) AGENCY RESPONSIBILITIES.—The head of each
18 Federal department or agency that uses controlled unclas-
19 sified information shall—

20 (1) implement the controlled unclassified infor-
21 mation framework consistent with the implementa-
22 tion guidance issued under subsection (b)(1);

23 (2) publicly issue guidance for the implementa-
24 tion of the controlled unclassified information frame-
25 work within the Federal department or agency, con-

1 sistent with the implementation guidance issued
2 under subsection (b)(1);

3 (3) designate an appropriately qualified senior
4 officer with the Federal department or agency as the
5 representative of the Federal department or agency
6 on the Council;

7 (4) implement a controlled unclassified informa-
8 tion training program for the Federal department or
9 agency, based on the Governmentwide training pro-
10 gram established under subsection (b)(9), and en-
11 sure all appropriate personnel understand controlled
12 unclassified information policies and procedures, and
13 can apply them when creating, disseminating, or
14 safeguarding controlled unclassified information ma-
15 terial;

16 (5) establish a process that enables the Federal
17 department or agency to address noncompliance with
18 or misuse of the controlled unclassified information
19 framework within the Federal department or agency
20 (including a process that allows an officer or em-
21 ployee of the Federal department or agency to chal-
22 lenge the use of controlled unclassified information
23 markings), and ensure management and oversight
24 issues or concerns can be resolved by the appropriate
25 officer of the Federal department or agency;

1 (6) establish a process within the Federal de-
2 partment or agency that, where appropriate,
3 promptly raises to the Archivist of the United States
4 matters of concern regarding the controlled unclassi-
5 fied information framework;

6 (7) consistent with the standards established
7 under subsection (b)(7), and where appropriate, de-
8 velop tools to track and monitor the designation of
9 controlled unclassified information by employees and
10 contractors of the Federal department or agency, for
11 the purpose of assessing compliance with and detect-
12 ing the misuse of the controlled unclassified informa-
13 tion framework;

14 (8) provide training to officers and employees of
15 the Federal department or agency on the controlled
16 unclassified information framework; and

17 (9) ensure that, not later than May 9, 2013,
18 the Federal department or agency has fully imple-
19 mented the controlled unclassified information
20 framework, consistent with policies, guidance, and
21 standards established by the Archivist of the United
22 States.

23 (f) IMPLEMENTATION OF THE CONTROLLED UN-
24 CLASSIFIED INFORMATION FRAMEWORK.—In carrying out

1 subsection (e), the head of a Federal department or agen-
2 cy shall ensure that—

3 (1) information is designated as controlled un-
4 classified information and includes an authorized
5 controlled unclassified information marking only if—

6 (A) a statute requires or authorizes such a
7 designation and marking; or

8 (B) the head of the Federal department or
9 agency, through a regulation, directive, or other
10 specific guidance to the Federal department or
11 agency that has been submitted to and ap-
12 proved by the Archivist of the United States
13 and published on the website of the National
14 Archives and Records Administration, deter-
15 mines that the information is controlled unclas-
16 sified information based on criteria established
17 by the Archivist of the United States, in con-
18 sultation with the heads of Federal departments
19 and agencies;

20 (2) notwithstanding paragraph (1), information
21 is not designated as controlled unclassified informa-
22 tion—

23 (A) to conceal a violation of law, ineffi-
24 ciency, or administrative error;

1 (B) to prevent embarrassment to the Fed-
2 eral Government, a State, local, tribal, or terri-
3 torial government, any official, department,
4 agency, or organization of the Federal Govern-
5 ment or a State, local, tribal, or territorial gov-
6 ernment, or any organization;

7 (C) to improperly or unlawfully interfere
8 with competition in the private sector;

9 (D) to prevent or delay the release of in-
10 formation that does not require such protection;

11 (E) if the information is required to be
12 made available to the public; or

13 (F) if the information has already been re-
14 leased to the public under proper authority; and

15 (3) the controlled unclassified information
16 framework is administered in a manner that ensures
17 that—

18 (A) information sharing within the Federal
19 Government and with State, local, tribal, and
20 territorial governments, the private sector, and
21 the public is enhanced and improved as a result
22 of the implementation of the controlled unclas-
23 sified information framework;

24 (B) all policies and standards of the Fed-
25 eral department or agency for the designation,

1 marking, safeguarding, and dissemination of
2 controlled unclassified information are con-
3 sistent with the controlled unclassified informa-
4 tion framework and any other policies, guide-
5 lines, procedures, instructions, or standards es-
6 tablished by the President, including in any
7 Presidential memoranda or executive orders;

8 (C) the controlled unclassified information
9 framework is implemented in a manner con-
10 sistent with applicable law, including Federal
11 and State laws protecting the privacy rights
12 and other legal rights of United States persons;

13 (D) the number of employees and contrac-
14 tors of the Federal department or agency who
15 have the authority to designate information as
16 controlled unclassified information is limited ap-
17 propriately;

18 (E) controlled unclassified information
19 markings are not a determinant of public dis-
20 closure under section 552 of title 5, United
21 States Code (commonly referred to as the
22 “Freedom of Information Act”);

23 (F) controlled unclassified information
24 markings are placed on archived or legacy ma-
25 terial whenever circulated, consistent with the

1 controlled unclassified information framework
2 and any other policies, guidelines, procedures,
3 instructions, or standards established by the
4 President, including in any executive memo-
5 randum or executive order;

6 (G) material that contains controlled un-
7 classified information and information that is
8 not controlled unclassified information, or that
9 contains multiple categories of controlled un-
10 classified information, is marked accordingly by
11 portions such that those categorical distinctions
12 are apparent; and

13 (H) the controlled unclassified information
14 framework supersedes any policy or procedure
15 relating to the creation, control, and sharing of
16 sensitive but unclassified information issued by
17 the Federal department or agency before the
18 date of enactment of this Act, except where oth-
19 erwise provided by law.

20 (g) PUBLIC ACCESS TO UNCLASSIFIED INFORMA-
21 TION.—A Federal department or agency shall make avail-
22 able to members of the public all controlled unclassified
23 information and other unclassified information in the pos-
24 session of the Federal department or agency that may be
25 released under an appropriate request under section 552

1 of title 5, United States Code (commonly referred to as
2 the “Freedom of Information Act”).

3 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion may be construed to prevent or discourage a Federal
5 department or agency from voluntarily releasing to the
6 public any unclassified information that is not exempt
7 from disclosure under section 552 of title 5, United States
8 Code (commonly referred to as the “Freedom of Informa-
9 tion Act”).

10 (i) CONGRESSIONAL ACCESS TO UNCLASSIFIED IN-
11 FORMATION.—The right of Congress to obtain access to
12 and release unclassified information, including controlled
13 unclassified information, shall remain unimpeded by the
14 provisions of this Act.

15 (j) REPORTING AND OVERSIGHT REQUIREMENTS.—

16 (1) ANNUAL REPORT.—

17 (A) IN GENERAL.—Not less frequently
18 than once each year, the Archivist of the United
19 States shall submit to Congress a report on the
20 implementation of the controlled unclassified in-
21 formation framework.

22 (B) CONTENTS.—Each report submitted
23 under subparagraph (A) shall include—

24 (i) an overall assessment on the imple-
25 mentation of the controlled unclassified in-

1 formation framework by the Federal Gov-
2 ernment;

3 (ii) an assessment of the efforts by
4 each Federal department or agency to im-
5 plement the controlled unclassified infor-
6 mation framework;

7 (iii) an estimate of the costs and sav-
8 ings associated with the implementation of
9 the controlled unclassified information
10 framework;

11 (iv) a description of the activities of
12 the Council; and

13 (v) recommendations on how to im-
14 prove the sharing of controlled unclassified
15 information within the Federal Govern-
16 ment and with State, local and tribal gov-
17 ernments.

18 (2) INSPECTORS GENERAL.—Not later than 5
19 years after the date of enactment of this Act, the In-
20 spectors General of each Federal department or
21 agency that is a member of the Information Sharing
22 Council and the Inspectors General of the Environ-
23 mental Protection Agency and Nuclear Regulatory
24 Commission shall—

1 (A) audit the compliance of the applicable
2 Federal department or agency with this Act and
3 the policies and procedures established under
4 the controlled unclassified information frame-
5 work; and

6 (B) submit a report on the findings of the
7 audit by the Inspector General under this para-
8 graph to—

9 (i) the Committee on Oversight and
10 Government Reform of the House of Rep-
11 resentatives;

12 (ii) the Committee on Homeland Se-
13 curity and Governmental Affairs of the
14 Senate;

15 (iii) any other committee of Congress
16 with jurisdiction of the applicable Federal
17 department or agency, as appropriate; and

18 (iv) the Archivist of the United
19 States.

20 (k) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Archivist of the
22 United States to carry out this Act—

23 (1) \$2,500,000 for fiscal year 2009;

24 (2) \$2,500,000 for fiscal year 2010;

25 (3) \$3,500,000 for fiscal year 2011;

- 1 (4) \$3,500,000 for fiscal year 2012; and
- 2 (5) \$2,500,000 for fiscal year 2013.

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S. 3662

A BILL

To establish the Controlled Unclassified Information Office, to require policies and procedures for the designation, marking, safeguarding, and dissemination of controlled unclassified information, and for other purposes.

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Read twice and placed on the calendar